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JOSEPH F. SPANOL, JR.
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No. 86-683

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

MICHAEL ZEMONICK, *et al.*,
v. *Petitioners,*

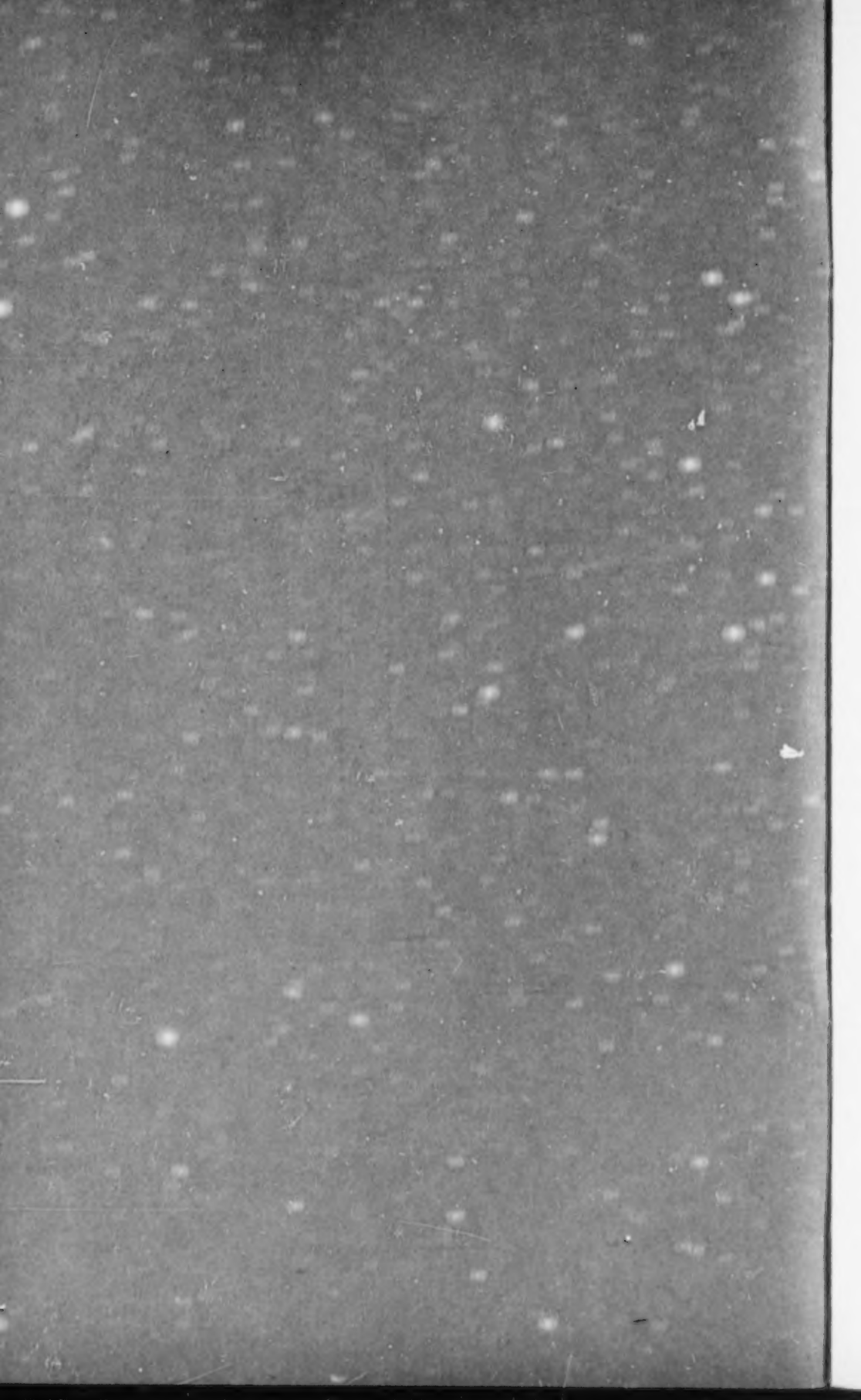
CONSOLIDATION COAL COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

JOINT BRIEF OF RESPONDENTS
CONSOLIDATION COAL COMPANY AND DISTRICT 31,
UNITED MINE WORKERS OF AMERICA
IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Circuit correctly held that this § 301/duty of fair representation hybrid action, commenced approximately 13 months after plaintiffs' discharges were upheld in arbitration, is time-barred by the six-month period of limitations formally adopted by this Court in *DelCostello*.



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**JOINT BRIEF OF RESPONDENTS
CONSOLIDATION COAL COMPANY AND DISTRICT 31,
UNITED MINE WORKERS OF AMERICA
IN OPPOSITION**

Respondents Consolidation Coal Company¹ and District 31, United Mine Workers of America submit that the petition of Michael Zemonick, et al.,² for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case should be denied. Consol and District 31 concur with

¹ Respondent Consolidation Coal Company will henceforth be referred to as "Consol." Respondent District 31, United Mine Workers of America will henceforth be referred to as "District 31." Consol is a subsidiary of Conoco, Inc., and Conoco is a subsidiary of E. I. DuPont de Nemours & Co.

² Petitioners will henceforth be referred to as "plaintiffs."

petitioners' discussions of *List of Parties, Decisions Below* and *Jurisdictional Grounds*. Although Consol and District 31 concur that §§ 10(b) and 301(a) of the Labor-Management Relations Act³ are relevant statutes, Respondents do not agree with Petitioners that West Virginia Code § 55-2-6 is relevant.

I. COUNTERSTATEMENT OF THE CASE.

On February 20, 1980, plaintiff Zemonick was discharged by Consol for instigating a one-day wildcat strike, which occurred on February 18th, at Mine No. 20 in Four States, West Virginia [App. 8-9, 19, 20].⁴ Hearing word of Zemonick's discharge, on February 21, 1980, the Mine No. 20 employees walked out again and were soon joined by essentially all UMWA employees at Consol's other coal mines in northern West Virginia [App. 10, 20; Steptoe aff., exh. 3(a), p. 12]. The latter wildcat strike continued for several weeks. Based upon proof obtained during the prolonged strike, Consol discharged several employees, including the other ten plaintiffs, on March 6th and 7th for strike instigation [App. 10, 20].

In accordance with the binding grievance and arbitration procedures of the National Bituminous Coal Wage Agreement of 1978,⁵ the discharged employees took Con-

³ 29 U.S.C. §§ 160(b) and 185(a), respectively. The Labor-Management Relations Act will henceforth be referred to as the LMRA.

⁴ Citations to the appendix herein refer to the joint appendix prepared for purposes of appeal to the United States Court of Appeals for the Fourth Circuit. Pursuant to Rule 19.1 of the Rules of the United States Supreme Court, Consol requested the Clerk of the Fourth Circuit to certify and transmit the joint appendix to this Court. Consol also requested the Fourth Circuit to transmit to this Court a copy of the affidavit of Robert M. Steptoe, Jr., which was filed with the District Court in support of Consol's cross-motion for summary judgment.

⁵ The National Bituminous Coal Wage Agreement of 1978 will henceforth be referred to as "the collective bargaining agreement." Relevant portions of the collective bargaining agreement are attached to the affidavit of Robert M. Steptoe, Jr.

sol's discharge decision to arbitration. After lengthy hearings, during which each plaintiff was represented by labor commissioners from UMWA District 31, Arbitrators Edmund J. Rollo and Carl E. Stoltenberg upheld all of the plaintiffs' discharges [App. 10, 20].⁶ Relying in part upon Arbitration Review Board Decisions 108 and 78-15, the arbitrators held that the plaintiffs were discharged for "just cause" by reason of their conduct designed to instigate illegal wildcat strikes [App. 10-11, 20-21].⁷

On June 26, 1981, approximately 13 months from the date of the last arbitration award, this action was commenced in the Circuit Court of Monongalia County, West Virginia. Consol and District 31 then timely removed the case to the United States District Court for the Northern District of West Virginia, at Elkins [App. 2].

The complaint alleges, *inter alia*, (1) that Consol, by discharging plaintiffs, breached the collective bargaining agreement, thereby violating § 301 of the LMRA; (2) that District 31 mishandled the ensuing grievance and arbitration proceeding, thereby violating its duty of fair representation; and (3) that, subsequent to the discharges, Consol unlawfully conspired with other employers to deprive plaintiffs of work in the coal mine industry [App. 7-17].

On January 3, 1983, plaintiffs moved for partial summary judgment, and shortly thereafter Consol filed its

⁶ The other fired employees were ordered to be reinstated by the arbitrators. The awards of Arbitrators Rollo and Stoltenberg relating to the plaintiffs may be found in the record which Consol requested the Fourth Circuit Clerk's office to transmit to this Court. They are attached as Exhibits 3(a)-(i) to the affidavit of Robert M. Steptoe, Jr.

⁷ ARB Decisions 108 and 78-15 may be found at pages 37-60 and 61-71, respectively, of the joint appendix.

cross-motion for partial summary judgment [App. 18-30, 37, 75]. While the motions were pending, this Court announced its decision in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983). Based upon *DelCostello*, Consol moved for partial summary judgment on the additional ground that plaintiffs' allegations of a § 301 violation by Consol and of a breach of the duty of fair representation by District 31 were barred by the applicable six-month statute of limitations [App. 89].

The District Court then issued a memorandum order granting Consol's motion and entered summary judgment in favor of Consol and District 31 as to all issues except the conspiracy claim, which was dismissed without prejudice [App. 97-103]. In essence, the District Court applied *DelCostello* and held that plaintiffs' claims of § 301 and duty of fair representation violations were subject to the six-month statute of limitations contained in § 10(b) of the LMRA [App. 99-100].

On appeal, a three-judge panel of the Fourth Circuit held, with Judge Ervin dissenting, that *DelCostello* should not be applied to this case. See *Zemonick v. Consolidation Coal Co.*, 762 F.2d 381 (4th Cir. 1985). In an *en banc* opinion, however, the Fourth Circuit voted 7-3 to adopt the reasoning of Judge Ervin, as stated in his dissenting panel opinion, and to affirm the ruling of the District Court. See *Zemonick v. Consolidation Coal Co.*, 796 F.2d 1546 (4th Cir. 1986).

II. REASONS FOR DENYING THE WRIT.

A. The Fourth Circuit's Decision Is In Complete Accord With This Court's *DelCostello* and *Flowers* Decisions.

This court has already decided the issue which petitioners now submit for review. In *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983),

the Court decided two separate cases,⁸ each presenting the question of what limitations period to apply to hybrid § 301 actions. In the first case, Philip DelCostello filed an action against both his former employer and his union approximately eight months after the grievance and arbitration procedure had been completed. The Fourth Circuit eventually affirmed the district court's determination that the claims against both the employer and the union were barred by Maryland's 30-day statute of limitations for vacating arbitration awards. *See DelCostello v. International Brotherhood of Teamsters*, 679 F.2d 879 (4th Cir. 1982).

In the second case, Donald Flowers and others also brought a hybrid § 301 action against their former employer and their union. That action was instituted approximately eleven months after the conclusion of the applicable grievance and arbitration procedure. The Second Circuit affirmed the district court's dismissal of the action against the employer, holding that New York's 90-day limitations period for vacating arbitration awards applied. With respect to the action against the union, however, the Second Circuit reversed the district court's dismissal and decided to apply New York's three-year limitations period applicable to nonmedical malpractice actions. *Flowers v. Local 2602, United Steel Workers of America*, 671 F.2d 87, 90-91 (2d Cir. 1982).

This Court granted *certiorari* in both *DelCostello* and *Flowers*, consolidating them for hearing and determination. Because both Circuit Courts of Appeal had already *applied* limitations periods to the actions before them, this Court was confronted squarely not only with the issue of what limitations period to apply to these claims, but also with the issue of whether the claims before the Court should be barred.

⁸ *DelCostello v. International Brotherhood of Teamsters*, 679 F.2d 879 (4th Cir. 1981); *Flowers v. Local 2602, United Steel Workers of America*, 671 F.2d 87 (2d Cir. 1982).

A review of this Court's opinion in the consolidated cases reveals that the Court decided both issues. After first concluding that the six-month limitations period applicable to unfair labor practice cases was the appropriate statute of limitations to apply to these cases, the Court then *applied* its decision retroactively to both cases. With respect to *Flowers*, this Court stated: "Since we hold that the suit is governed by the 6-month provision of § 10(b), we reverse the judgment." 462 U.S. at 172. The result reached by the Court was to overturn the Second Circuit's ruling that the three-year statute of limitations for nonmedical malpractice actions applied to the claim against the union; to overturn the decision that the 90-day statute applied to the employer; and to order the case dismissed against both the union and the employer.

With respect to *DelCostello*, this Court ordered that the case be remanded to determine whether certain events had tolled the running of the six-month statute of limitations. Nevertheless, it is plain from this Court's language that, on remand, the six-month limitations period was to be applied. *Id.* at 172. Indeed, on remand, the Fourth Circuit applied the six-month period retroactively to bar DelCostello's action. *DelCostello v. International Brotherhood of Teamsters Local 557*, 762 F.2d 1219 (4th Cir. 1985).

The issues presented to this Court in the *DelCostello* and *Flowers* cases are identical to the issues presented in the case *sub judice*. By applying the six-month limitations period retroactively to bar plaintiffs' claims in this case, the Fourth Circuit has merely applied *DelCostello*. Hence, review of the decision below is unwarranted.

B. Nine Of Eleven Circuits Which Have Considered The Issue, Including The Two Circuits Sitting *En Banc*, Have Held That *DelCostello* Should Be Applied Retroactively To All Cases Brought In Their Respective Circuits.

In addition to the Fourth Circuit, eight other Circuit Courts of Appeals have held that the six-month limitations period contained in § 10(b) is to be applied retroactively to *all* cases brought in their respective circuits, even if the cases were filed before *DelCostello* was announced. See, e.g., *Scaglione v. Communications Workers of America Local 1395*, 759 F.2d 201 (1st Cir. 1985), *cert. denied*, — U.S. —, 106 S.Ct. 251, 88 L.Ed.2d 159 (1985); *Assad v. Mount Sinai Hospital*, 725 F.2d 837 (2d Cir. 1984);⁹ *Taylor v. Ford Motor Co.*, 761 F.2d 931 (3d Cir. 1985), *cert. denied*, — U.S. —, 106 S. Ct. 849, 88 L.Ed.2d 890 (1986); *Gray v. Local 714, International Union of Operating Engineers*, 778 F.2d 1087 (5th Cir. 1985); *Miller v. Jeep Corp.*, 774 F.2d 111 (6th Cir. 1985); *Landahl v. PPG Industries, Inc.*, 746 F.2d 1312 (7th Cir. 1984); *Zahn v. Iowa Mfg. Co. of Cedar Rapids, Iowa*, 740 F.2d 669 (8th Cir. 1984); *Rogers v. Lockheed-Georgia Co.*, 720 F.2d 1247 (11th Cir. 1983), *cert. denied*, 469 U.S. 916 (1984).¹⁰

⁹ But see *Byrne v. Buffalo Creek Railroad Co.*, 765 F.2d 364 (2d Cir. 1985), where the Second Circuit refused to apply *DelCostello* retroactively because the case had been tried and damages had been awarded before *DelCostello* was decided. The Second Circuit, however, stressed that it was only because of those unusual circumstances that the Court refused to give retrospective effect to *DelCostello*. 765 F.2d at 366.

¹⁰ Only the Ninth and Tenth Circuits have failed to follow the lead of this Court in *DelCostello* by refusing to apply the six-month limitations period retrospectively to all cases. The Ninth Circuit has determined to apply *DelCostello* retroactively only when it benefits plaintiffs by lengthening the limitations period that would otherwise be applicable under state law. See *Peterson v. Kennedy*, 771 F.2d 1244 (9th Cir. 1985), *cert. denied*, — U.S. —, 106 S. Ct. 1642, 90 L.Ed.2d 187 (1986). The Tenth Circuit has been

The Fourth Circuit, in this case, was the second circuit sitting *en banc* to consider the issue of whether *DelCostello* should be applied retroactively. The Fourth Circuit's reasoning, as articulated by Judge Ervin, is reprinted in the appendix which is attached to plaintiffs' petition (pp. 1-3, 41-79) and need not be restated here.

The only other circuit to hear the *DelCostello* retroactivity issue while sitting *en banc* is the Sixth Circuit. In *Smith v. General Motors Corp.*, 747 F.2d 372 (6th Cir. 1984), the Sixth Circuit consolidated three cases for the purpose of addressing the retroactivity question. Holding that it was unnecessary to conduct a retroactivity analysis using the criteria announced by this Court in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), the Sixth Circuit ruled that "the Supreme Court held in *DelCostello* that the statute of limitations should be applied retroactively by barring the claim that was in front of the Court," 747 F.2d at 375, observing further that:

If the Supreme Court had not intended for *DelCostello* to apply retroactively, the Court easily . . . could have applied the statute of limitations prospectively, as it did in *Chevron*.

Id. Thus, applying the six-month limitations period, the Sixth Circuit held that two of the three cases before it, otherwise timely filed under the pre-existing state statutes of limitation, were to be dismissed, and that the third case, otherwise barred by the pre-existing state statute, was to be reinstated.

With its *en banc* decision in this case, the Fourth Circuit is now aligned with the other eight circuits holding that *DelCostello* should be applied retroactively to all

inconsistent in its resolution of the *DelCostello* retroactivity issue. See *Jones v. Consolidated Freightways Corp. of Delaware*, 776 F.2d 1458 (10th Cir. 1985) (where *DelCostello* was not applied retroactively); *Barnett v. United Air Lines, Inc.*, 738 F.2d 358 (10th Cir. 1984), *cert. denied*, 469 U.S. 1087 (1984) (where *DelCostello* was applied retroactively).

cases. Contrary to plaintiffs' argument, no "sharp conflict" among the circuits exists.

C. This Court Has Repeatedly Refused To Grant *Certiorari* On The Issue Of Whether To Apply *DelCostello* Retroactively, And The Issue Is Not Likely To Arise On Many More Occasions.

The petition in the case *sub judice* is at least the fourteenth seeking review of a decision of a Circuit Court of Appeals relating to whether *DelCostello* should be applied retroactively. The first thirteen were denied¹¹ and nothing about this case compels a different result.

Moreover, it is important to note that the issue of whether to give retrospective application to *DelCostello* is not likely to recur. For a period after this Court announced its *DelCostello* ruling on June 8, 1983, many

¹¹ See *Peterson v. Kennedy*, 771 F.2d 1244 (9th Cir. 1985), *cert. denied*, — U.S. —, 106 S. Ct. 1642, 90 L.Ed.2d 187 (1986); *Taylor v. Ford Motor Co.*, 761 F.2d 931 (3d Cir. 1985); *cert. denied*, — U.S. —, 106 S. Ct. 849, 88 L.Ed.2d 890 (1986); *Scaglione v. Communications Workers of America, Local 1395*, 759 F.2d 201 (1st Cir. 1985), *cert. denied*, — U.S. —, 106 S. Ct. 251, 88 L.Ed.2d 259 (1985); *Aragon v. Federated Department Stores*, 750 F.2d 1447 (9th Cir. 1985); *cert. denied*, — U.S. —, 106 S. Ct. 229, 88 L.Ed.2d 229 (1985); *Glover v. United Grocers, Inc.*, 746 F.2d 1380 (9th Cir. 1984), *cert. denied*, — U.S. —, 105 S. Ct. 2357, 86 L.Ed.2d 258 (1985); *Barnett v. United Air Lines, Inc.*, 738 F.2d 358 (10th Cir. 1984), *cert. denied*, 469 U.S. 1087 (1984); *Welyczko v. U.S. Air, Inc.*, 733 F.2d 239 (2d Cir. 1984), *cert. denied*, 469 U.S. 1036 (1984); *Aarsvold v. Greyhound Lines, Inc.*, 724 F.2d 72 (8th Cir. 1983), *cert. denied*, 467 U.S. 1253 (1984); *McNaughton v. Dillingham Corp.*, 722 F.2d 1459 (9th Cir. 1984), *cert. denied*, 469 U.S. 916 (1984); *Murray v. Branch Motor Express Co.*, 723 F.2d 1146 (4th Cir. 1983), *cert. denied*, 469 U.S. 916 (1984); *Rogers v. Lockheed-Georgia Co.*, 720 F.2d 1247 (11th Cir. 1983), *cert. denied*, 469 U.S. 916 (1984); *Edwards v. Teamsters Local Union No. 36, Building Material and Dump Truck Drivers*, 719 F.2d 1036 (9th Cir. 1983), *cert. denied*, 465 U.S. 1102 (1984); *Metz v. Tootsie Roll Industries, Inc.*, 715 F.2d 299 (7th Cir. 1983), *cert. denied*, 464 U.S. 1070 (1984).

District Courts and Circuit Courts of Appeal had to decide whether to apply this Court's decision retroactively, thereby barring § 301/duty of fair representation claims which were not filed within six months of the date of accrual. Considering the fact that *DelCostello* was decided approximately three and one-half years ago, it is not likely that many more courts, if any, will be faced with the retroactivity question. Accordingly, the retroactivity of *DelCostello* no longer is an issue on which District Courts and Circuit Courts of Appeals need this Court's guidance.

D. The Six-Month Period Of Limitations Has Been Properly Applied To All Of Plaintiffs' Federal Claims.

- 1. *Because Plaintiffs' "Law-And-Public Policy" Challenges To The Arbitration Awards Are Inextricably Intertwined With Their § 301 Duty Of Fair Representation Hybrid Claims, Application Of The Six-Month Limitations Period Was Appropriate.***

Plaintiffs contend that their discharges breached the collective bargaining agreement [App. 7-17]. In particular, all of the plaintiffs allege that Consol violated Article XXIV of the Agreement by discharging them without "just cause" [App. 15]. Plaintiff Zemonick additionally contends that he was discharged in violation of Article XXIII of the Agreement, which prohibits discharging a mine committee member for actions carried out in his official capacity [App. 14]. Finally, the other ten plaintiffs allege that Consol breached the collective bargaining agreement by infringing on their right to strike [App. 15]. Except for the limited allegation that Consol conspired with other coal companies to deprive them of employment in the coal mining industry, the remainder of the complaint challenges the reasoning of the arbitrators.

In accordance with the provisions of the collective bargaining agreement, the dispute over Consol's decision to discharge plaintiffs was submitted to arbitration for final resolution. This Court, in describing the role of labor arbitrators, has admonished that:

[T]he labor arbitrator's source of law is not confined to express provisions of the contract as the industrial common law—the practices of the industry and the shop—is equally part of the collective bargaining agreement, although not expressed in it.

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-82 (1960). In accordance therewith, Arbitrators Rollo and Stoltenberg interpreted the collective bargaining agreement and, relying in part upon the common law of the shop as expressed in ARB Decisions 108 and 78-15, held that Consol did not breach the agreement by discharging plaintiffs.¹²

In the so-called "law-and-public policy" claim, plaintiffs are alleging that, by relying in part upon ARB Decisions 108 and 78-15, the arbitrators acted in violation of law and public policy. In short, plaintiffs are challenging the analysis of the arbitrators and claiming that, contrary to the decision of the arbitrators, Consol violated § 301 and the collective bargaining agreement by discharging plaintiffs.

As stated by the District Court, "a fair reading of the complaint . . . reveals (1) a common theme of employer breach of the collective bargaining agreement and (2) union breach of the duty of fair representation" [App. 101]. Indeed, plaintiffs' breach of contract challenges to the reasoning of the arbitrators on contractual, legal or public policy grounds is inextricably intertwined with their § 301/duty of fair representation claims. Plaintiffs certainly would not have brought this action

¹² ARB Decisions 108 and 78-15 interpreted the collective bargaining agreement. Accordingly, the decisions may be considered an extension of the agreement.

had the arbitrators reversed the discharges upon any of those grounds, thereby finding Consol in breach of contract.

Obviously, the Fourth Circuit could also see no distinction between plaintiffs' § 301/duty of fair representation claims and their § 301/law-and-public policy claims. Despite the fact that plaintiffs attempted to make that distinction, neither the majority nor the minority in either the *en banc* or panel opinions even mentioned plaintiffs' law-and-public policy claims. Implicitly, all ten Fourth Circuit judges who considered the issue have agreed with the District Court that the claims cannot be distinguished.¹³

2. Irrespective Of How Plaintiffs' Claims Are Labeled, The Six-Month Limitations Period Of § 10(b) Should Be Applicable.

Plaintiffs' reliance on *United Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), for the proposition that their so-called § 301/law-and-public policy claims should be governed by the state statute of limitations for breach of contract is misplaced. As noted by the Supreme Court in *DelCostello*, *Hoosier* was a "straight-forward" breach of contract action brought pursuant to § 301 by a union against an employer. *DelCostello*, 462 U.S. at 162. Unlike the instant case, there was no agreement to submit labor disputes to arbitration. In deciding that Indiana's six-year limitations period for oral contracts was most appropriate for the breach of contract issue then before it, the *Hoosier* Court reasoned that the federal policy which favors national uniformity in § 301 suits was important when the parties' contracted-for procedures for the settlement of disputes were involved. 383 U.S. at 702. Moreover, as the *DelCostello*

¹³ It is significant that plaintiffs have not cited any authority to support their position that, for purposes of determining the applicable limitations period, the so-called "§ 301/law-and-public policy" claims should be separated and treated differently from their § 301/duty of fair representation hybrid claims.

Court pointed out, the *Hoosier* Court “expressly reserved” the question of what limitations period to apply in other § 301 actions where the policy factors differed:

The present suit is essentially an action for damages caused by an alleged breach of an employer’s obligation embodied in a collective bargaining agreement. Such an action closely resembles an action for breach of contract cognizable at common law. Whether other § 301 suits different from the present one might call for the application of other rules on timeliness, we are not required to decide, and we indicate no view whatsoever on that question. *See, e.g., Holmberg v. Armbrrecht*, 327 U.S. 392 [90 L.Ed. 743, 665 S. Ct. 582].

DelCostello, 462 U.S. at 163, quoting *Hoosier*, 383 U.S. at 705 n.7.

Irrespective of how plaintiffs’ claims are labeled, the policy factors which are relevant in the case at bar are identical to those considered by the Court in *DelCostello*. First, national uniformity in the use of limitations periods is important because this case involves “‘those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it.’” *DelCostello*, 462 U.S. at 163, quoting *Hoosier*, 383 U.S. at 702. Likewise, because this case involves labor disputes subject to the grievance and arbitration procedures of the collective bargaining agreement, the policy of promoting “relatively rapid final resolution of labor disputes” is at stake. *DelCostello*, 462 U.S. at 168; *see also The Steelworkers Trilogy*.¹⁴ Finally, plaintiffs have an interest in the selection of a limitations period which provides them with adequate time within which to assess their claims and bring their action. *DelCostello*, 462 U.S. at 166.

¹⁴ *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

In *DelCostello*, this Court stated that, in § 10(b), Congress enacted a statute “actually designed to accommodate a balance of interests very similar to that at stake here” and, accordingly, the Court found that § 10(b) provided the closest analogy to the cases before it. 462 U.S. at 169. Because the policy factors at stake in the instant case are identical to those at stake in *DelCostello*, this Court’s *DelCostello* analysis and decision are equally applicable. Thus, the six-month limitations period of § 10(b) applied by the *DelCostello* Court is appropriate for application to all of the federal claims raised in the case at bar and the analysis of the District Court, which was affirmed by the Fourth Circuit, is proper.

CONCLUSION

For the reasons herein expressed, Respondents Consolidation Coal Company and District 31, United Mine Workers of America respectfully request the Court to deny the petition of Michael Zemonick, and others, for a writ of *certiorari*.

Respectfully submitted,

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